

EMPLOYEE PLANS DETERMINATIONS QUALITY ASSURANCE BULLETIN

EGTRRA STAGGERED REMEDIAL AMENDMENT PERIOD AND REMEDIAL AMENDMENT CYCLE FOR INDIVIDUALLY DESIGNED PLANS

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Background

This bulletin revises the QAB issued on January 23, 2006 to clarify that a parent-subsidiary organization may make a controlled group election to use either Cycle A or the parent's EIN to determine the cycle.

Rev. Proc. 2005-66 establishes cyclical remedial amendment periods under IRC 401(b) for individually designed and pre-approved plans.

Every 401(a) individually designed plan has a five-year remedial amendment cycle (RAC). The cycles are staggered and spread over five-year periods based on the last digit of the Employer's Identification Number (EIN). Within each five-year cycle, employers have a specific time to file for a determination letter. That filing period is the last twelve months of the cycle and runs from February 1 to January 31. Thus, plan sponsors who want reliance will only need to apply for new determination letters generally once every five years.

Pre-approved plans will have a six-year remedial amendment cycle (RAC). This amendment cycle will be different for defined contribution and defined benefit plans. All pre-approved defined contribution plans will have the same six-year remedial amendment cycle. A separate six-year remedial amendment cycle will apply to all pre-approved defined benefit plans. Generally, sponsors, practitioners, and adopters of pre-approved plans will only need to apply for new opinion, advisory letters or determination letters (for those who want reliance) once every six years. Pre-approved plans will be covered in a separate Quality Assurance Bulletin issued later.

Cumulative List

The Cumulative List of Changes in Plan Qualification Requirements (Cumulative List) will be published annually, usually around mid-November. The Cumulative Lists are intended to identify all changes in the qualification requirements resulting from statutory, regulatory, or other changes in guidance published in the Internal Revenue Bulletin that are required to be taken into account in the written plan document for an upcoming cycle. Specialist will review plans whose submission period begins on February 1st following issuance of the Cumulative List.

Specialist will not consider in their review any qualification changes that become effective, any guidance published, or any statutes enacted, after the issuance of the applicable Cumulative List unless the item has been identified in that Cumulative List.

Placement of a guidance item on the Cumulative List issued before February 1st will make the provision required even if the actual guidance is not published. Specialists will, however, consider in their review of determination application all qualification requirements in effect, or published before the issuance of the applicable Cumulative List whether or not included in that Cumulative List.

EXAMPLE 1: An individually designed plan that is filing under Cycle A will be submitted for a determination letter between February 1, 2006 and January 31, 2007. The Specialist will review the plan for Cycle A based on the 2005 cumulative list.

Remedial Amendment Cycle (RAC)

In general, an individually-designed plan's five-year RAC is determined by reference to the last digit of the employer identification number (EIN) of the employer sponsoring the plan (including a self-employed person with no employees). The cycles are determined as shown in Table 1. Table 2 outlines unusual circumstances and exceptions to the general rule.

Remedial Amendment Period (RAP)

The RAP is the period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted.

Table 1: Determination of Cycle Based on EIN

If the last digit of the plan sponsor's EIN is--	The plan's cycle is--	Last day of the initial cycle
1 or 6	Cycle A	1-31-07
2 or 7	Cycle B	1-31-08
3 or 8	Cycle C	1-31-09
4 or 9	Cycle D	1-31-10
5 or 0	Cycle E	1-31-11

Table 2: Exceptions to the General Rule For Individually Designed Plans

AFFILIATED SERVICE GROUP (ASG) AND/OR CONTROLLED GROUP(CG)	For a plan maintained by multiple members of an ASG or a CG under IRC 414(b) or (c), the 5-year RAC is determined by the last digit of the EIN that is or will be used on Form 5500.
	ELECTION OF CYCLE A
	If more than one plan is maintained by members of an ASG, or a CG under IRC 414(b) or (c), including a parent-subsidary organization, Cycle A may be elected as the 5-year cycle for all plans (other than multi-employer or multiple employer plans). The election must be made jointly by all members of the ASG or the CG.*
	PARENT-SUBSIDIARY CONTROLLED GROUP
	If more than one plan is maintained by a CG under IRC 414(b) or (c) and it is a parent-subsidary CG organization, an election may be made that the RAC be determined by the last digit of the parent's EIN. This election is to be made by the parent.*
MULTIPLE EMPLOYER PLAN	Cycle B (except for governmental multiple employer plans)
GOVERNMENTAL PLAN	Cycle C (including governmental multiple employer plans)
MULTI-EMPLOYER PLAN	Cycle D
MERGERS, ACQUISITIONS, AND SPIN-OFFS	Use the surviving plans EIN after a merger, plan acquisition, change in plan sponsorship, or plan spin-off.
CHANGE IN EIN, CONTROLLED GROUP STATUS, AFFILIATED SERVICE GROUP STATUS	The RAC will be determined by the changed EIN, CG status, ASG status, etc., of the employer that maintains the plan. This change could result in the need to make a new election for the CG and ASG.
SELF-EMPLOYED	Submissions will be based on the last digit of the employer's EIN. However, for the first determination letter submitted under Rev. Proc. 2005-66, the determination letter application based on the last digit of the individual's SSN will be processed as an "on cycle" application

* The election must be made by the end of the earliest cycle (determined as of the date of the election) for which a determination letter (DL) application would have been required to be submitted. The election must list all members of the group, including EINs, and all plans (other than multiemployer plans (MP) and multiple employer plans (MEP)) that are maintained by each member of the group. The election must be filed with the 1st DL application that is submitted in accordance with Rev. Proc. 2005-66 for any plan (other than MP or MEP) maintained by any member of the group. Once made the election will apply and may not be modified or revoked except for a merger, acquisition or plan spin-off or change in EIN, plan sponsorship, CG or ASG. (Section 11 of Rev. Proc. 2005-66)

If there is a change in EIN, controlled group status, affiliated service group status, etc of the employer that maintains the plan, the RAC will be determined on the basis of the changed EIN, controlled group status, ASG status, etc. of the employer that maintains the plan. This change could result in the need to make a new election for controlled group and affiliated service group.

If one of the above transactions shortens the remaining cycle to less than 12 months then the plan's current cycle is extended for 12 months and the next five year cycle will be shortened accordingly. This extension does not apply to other plans of the employer that are not similarly affected.

Changing from Pre-Approved Status to Individually Designed

A. Switching to an Individually Designed Plan

A pre-approved plan that switches to an individually designed plan will stay on the current six year cycle and then switch to the five year individually designed cycle beginning immediately after the end of the current six year cycle. However, if the end of the first five year cycle that ends after the closing of the six year cycle is less than twelve calendar months after the date of the favorable determination letter, then the plan's current cycle is extended for twelve calendar months and the next five year cycle will be shortened accordingly.

B. Amending out of Prototype Status

Generally, an employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options, if the plan permits or contemplates such a change) is considered to have adopted an individually designed plan. (See section 5.02 of Rev. Proc. 2005-16.)

Good Faith plan amendments that are adopted timely by employers sponsoring M&P plans will be disregarded for purposes of determining an employer's remedial amendment cycle. Thus, the plan will continue to be treated as an M&P plan and eligible for the six-year remedial amendment cycle on a continuing basis as provided in section 24.02 of Rev. Proc. 2005-16, unless one of the following occurs:

- (1) The employer adopts one or a series of amendments that either by itself or taken together, causes the plan to fall into one of the categories listed in section 6.03 of Rev. Proc. 2005-16, or the Service uses its discretion under section 24.03 of Rev. Proc. 2005-16 to determine that the plan is individually designed due to the amendment, or
- (2) The adopting employer severs ties with the M&P sponsor (that is, does not adopt a pre-approved plan with a current opinion or advisory letter for the applicable remedial amendment cycle).

An employer that adopts an amendment which causes an M&P plan to be treated as an individually designed plan, but for remedial amendment cycle purposes remains eligible for the six-year remedial amendment cycle, must file a determination letter application (that is, a Form 5300) for reliance. The determination letter application should be filed

during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt and submit determination letter applications, (if applicable). The Service will use the applicable Cumulative List based on the date of the determination letter submission in its review. Procedures for filing the Form 5300 are similar to the procedures set forth in section 9.09 in Rev. Proc. 2005-6, for volume submitter plans, except for the following:

- (1) A list of modifications is not required to be included.
- (2) Any changes adopted by the employer must be made in the form of an amendment and not incorporated into the underlying M&P plan document.

If the employer is required to obtain a determination letter in order to have reliance, then the sponsor's authority to amend on behalf of the adopting employer is conditioned on the plan being covered by a favorable determination letter. However, the sponsor will no longer have the authority to amend on behalf of the employer if the amendment falls into one of the categories listed in section 6.03 of Rev. Proc. 2005-16 or section 24.03 of Rev. Proc. 2005-16.

If the Form 5300 is filed during the five year RAC, and before the approximate two-year period within the six-year remedial amendment cycle the Service will treat the plan as being individually designed and the plan will have to meet the cumulative list applicable as of the date the application is submitted. The determination letter will include an expiration date and in order to convert back to a pre-approved plan a Form 8905 will need to be executed by the expiration date on the determination letter or the employer must adopt a pre-approved plan with a current opinion or advisory letter.

Extension of the EGTRRA Remedial Amendment Period for Individually Designed Plans Submission Process

Rev. Proc. 2005-66 extends the EGTRRA RAP for individually designed plans to the end of the initial applicable five-year cycle. This extension of the EGTRRA RAP extends the RAP for all disqualifying provisions to which the EGTRRA RAP applies, including plan provisions required or permitted to be amended for EGTRRA, final regulations under § 401(a)(9) of the Code (required minimum distributions), Rev. Rul. 2001-62 (applicable mortality table), Rev. Rul. 2002-27 (deemed section 125 compensation), and disqualifying provisions described in Rev. Proc. 2004-25. This extension is only available to plans that satisfy the conditions for eligibility for the EGTRRA RAP as set forth in Notice 2001-42 which requires the adoption of timely good faith EGTRRA plan amendments. The availability of the remedial amendment period with the respect to the three requirements mentioned above is conditioned on the adoption of plan amendments by the time specified in the applicable guidance. In order to determine if the good faith EGTRRA amendments were timely adopted, the specialist should secure the executed good faith amendments. In general, a good faith EGTRRA amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST RAP.

On February 1, 2006, the Service will begin to accept applications for determination letters for individually designed plans that take into account the requirements of EGTRRA, and other items that will be identified on the 2005 Cumulative List of Changes in Plan Qualification Requirements. Individually designed plans must be restated when they are submitted for determination letter applications for the initial amendment cycle and subsequent remedial amendment cycles. For this purpose, submission of a working copy of the plan in a restated format will suffice. The beginning and ending of the filing period, based on EINs, for the staggered EGTRRA remedial amendment cycle is illustrated in Table 3. The table also provides the Cumulative List dates and the dates of the next five-year RAC.

Table 3: Filing Periods with Applicable Cumulative List Dates

EIN Ends in	Categories to be considered	Cycle	Initial Filing Period for EGTRRA RAP Begins	Initial Filing Period for EGTRRA RAP Ends	Cum List Date	Initial DL Expiration Date	Next 5 Year RAC
1 or 6	CG or ASG may be submitted	A	2/1/2006	1/31/2007	11/2005	1/31/2012	2/1/2007-1/31/2012
2 or 7	Multiple	B	2/1/2007	1/31/2008	11/2006	1/31/2013	2/1/2008-1/31/2013
3 or 8	Govern includes Multiple govern	C	2/1/2008	1/31/2009	11/2007	1/31/2014	2/1/2009-1/31/2014
4 or 9	Multi-employer	D	2/1/2009	1/31/2010	11/2008	1/31/2015	2/1/2010-1/31/2015
5 or 0		E	2/1/2010	1/31/2011	11/2009	1/31/2016	2-1-2011-1/31/2016
Parent-Subsidiary controlled group organization		If more than one plan is maintained by a CG under 414(b) or (c) and the parent does not elect to use the Parent's EIN or Cycle A then the plans may appear in any of the five cycles					

EXAMPLE 2: Employer M is a C corporation. The last digit of Employer M's EIN is 7. Employer M adopts a new plan, Plan X on January 1, 2006. The cycle for Plan X is Cycle B. The tax year of Employer M and the plan year of Plan X is the calendar year. Since Employer M timely adopted Plan X and made timely good faith amendments, the initial remedial amendment cycle for Plan X ends January 31, 2008. Any remedial amendments required for Plan X to correct a disqualifying provision as described in § 1.401(b)-1(b)(1) must be adopted by January 31, 2008, unless an application for a determination letter is submitted by that date. The plan would then be retroactively effective to the first day Employer M adopted Plan X in 2006. The subsequent 5-year remedial amendment cycles end on January 31, 2013, January 31, 2018, etc.

On-Cycle Filing of Determination Letters

Within the five-year remedial amendment cycle for an individually designed plan there is a 12-month period of time to file for a determination letter. That filing period is the last twelve months of the plan's five-year remedial amendment cycle and runs from February 1 to January 31. Filing during this twelve month period of time is called "on-cycle" filing. Plan sponsors of individually designed plans that want to preserve reliance on a plan's favorable determination letter must file for a new determination letter during their on-cycle period. Specialists will review the employer's EIN to determine if the application(s) were submitted on-cycle.

Determination letters issued to individually designed plans will include an expiration date and a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received.

Off-Cycle Filing of Determination Letters

An application filed outside the 12-month period discussed above is considered to be filed off cycle. The off-cycle filing will be reviewed using the same Cumulative List that would be used for an application that was filed "on-cycle" on the same date as the "off-cycle" filing date. This means that the determination letter issued for the plan may not take into account any or all of the changes in qualification requirements for which the plan must be amended within the plan's normal remedial amendment cycle. Consequently, the plan may need to be further amended within that normal cycle and another determination letter application will need to be filed within the last twelve months of the cycle if the plan sponsor wishes to preserve reliance on a determination letter. The applications submitted in an off-cycle period will not be reviewed until all on-cycle plans for that particular year have been reviewed and processed. Specialists will review the employer's EIN to determine if the application was submitted off-cycle.

EXAMPLE 3: The remedial amendment cycle for Plan Z is based on the last digit of Employer L's EIN, which is 0. Plan Z's cycle is Cycle E. The tax year of Employer L and the plan year of Plan Z is the calendar year. The initial five-year remedial amendment cycle (that is, EGTRRA remedial amendment period) for Plan Z ends January 31, 2011, and the subsequent 5-year remedial amendment cycle ends January 31, 2016. Employer L submits a determination letter application on March 1, 2009. The 2008 Cumulative List will be used to review Employer L's determination letter submission. Since the initial five-year remedial amendment cycle and the determination letter will expire on January 31, 2011, Employer L will need to amend for the 2009 CL and re-submit a new determination letter application during the last twelve months of the remedial amendment cycle (between February 1, 2010 to January 31, 2011) to continue to have reliance on the determination letter after that date.

Interim Amendments

Interim amendment is defined in section 3.03 of Rev. Proc. 2005-66 as “a change made in the qualification requirements either due to a statutory change, a regulation, or other published guidance.” For a disqualifying provision or a provision that is integral to a disqualifying provision, an interim amendment must be adopted by the later of (1) the due date (including extensions) for filing the income tax return for the employer’s taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer need not be amended for a disqualifying provision until the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins. A discretionary amendment must be adopted by the end of the plan year in which the amendment is effective. An interim amendment will generally be required by the deadline set forth in this section.

Example 4: Employer N sponsors Plan Y. The tax year of Employer N and the plan year of Plan Y is the calendar year. The last digit of Employer N’s EIN ends in 4 and therefore Plan Y’s cycle is D. The initial RAC for Plan Y ends January 31, 2010. In January 2009, guidance is published effective for the plan years beginning on or after January 1, 2010 and first appears on the 2009 CL. Employer N submits a determination letter application on July 1, 2009. The application was received on cycle and will be reviewed using the 2008 Cumulative List. Since the guidance issued in 2009 was published after the issuance of the 2008 CL and not identified and included on such list, the Service will not consider in its review the published guidance. These will be treated as interim amendments and must be adopted by the later of:

- (1) due date of tax return, 3-15-11 plus extensions **9-15-11** or*
- (2) 12-31-10*

Plan Terminations

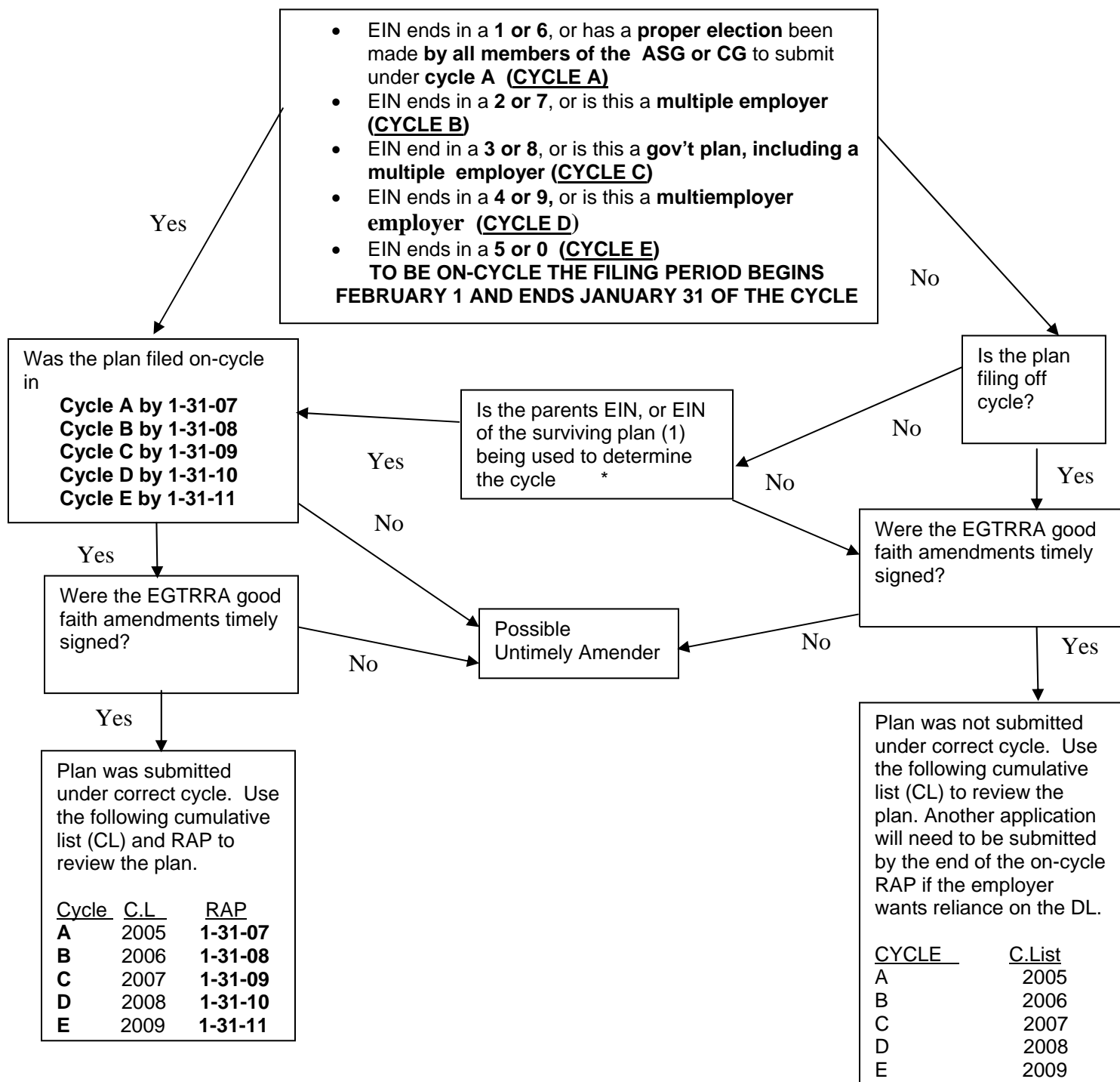
For plan terminations the RAC will generally be shortened. Thus, any retroactive remedial plan amendments or other required amendments for a terminating plan must be adopted in connection with the plan termination. This will include the latest Cumulative List and any other guidance issued subsequent to the CL and prior to the date of termination. An application will be deemed to be filed in connection with the plan termination if it is filed no later than the later of:

- 1. One year from the effective date of termination or
- 2. One year from the date on which the action terminating the plan is adopted

In no event can the application be filed later than 12 months from the date of distribution of substantially all plan assets.

EXAMPLE 5: A Defined Benefit Plan has a proposed date of termination of 3-1-05 and submits for a determination letter on 7-15-05 for the termination. The Service has not changed the rules on plan termination, all plans must be updated for all statutory, regulatory and published guidance in effect on the date of termination such as the change to IRC 415(b)(2)(E) required by the Pension Funding Equity Act.

Exhibit 1 **EGTRRA RAP FOR INDIVIDUALLY DESIGNED PLANS**



(1) surviving plan means the remaining plan after a change in entity such as a merger, acquisition, spin-off, or change in EIN

* If the answer is yes then the plan is an on cycle plan